

In The  
Supreme Court of the United States  
October Term, 1989

EDDIE KELLER; RAYMOND BROSTERHOUS; DAN M.  
KINTER; DAVID LAMPE; GARRETT BEAUMONT;  
CHRISTOPHER L. FAIRCHILD; JOHN A. GRODNIER;  
CHRISTOPHER N. HEARD; LEONARD C. HOAR, JR.;  
J. ROBERT JIBSON; CHARLES P. JUST; DAROLD D.  
PIEPER; THOMAS HUNTER RUSSELL; NANCY L. SWEET;  
MICHAEL J. WEINBERGER; DAVID E. WHITTINGTON;  
THOMAS R. YANGER; WARD A. CAMPBELL; DONALD C.  
MEANY; ASSEMBLYMAN PATRICK J. NOLAN; and  
A. WELLS PETERSEN,

v.

*Petitioners,*

STATE BAR OF CALIFORNIA, a public corporation;  
ANTHONY M. MURRAY; PATRICIA GREENE; GIRT K.  
HIRSCHBERG; LELAND R. SELNA, JR.; GEOFFREY  
VAN LOUKS; THOMAS W. ERES; JOHN H. COSTANZO;  
GEORGE W. COUCH, III; BURKE M. CRITCHFIELD;  
THOMAS R. DAVIS; DIXON Q. DERN; RUTH CHURCH  
GUPTA; DALE E. HANST; LEONARD HERR; ROBERT A.  
HINE; MARTA MACIAS; PHILLIP SCHAFER; CRAIG A.  
SILBERMAN; DANIEL J. TOBIN; JAMES D. WARD;  
and JOON HEE RHO,

*Respondents.*

On Writ Of Certiorari in the Supreme Court Of California

PETITIONERS' OPENING BRIEF

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## ISSUES PRESENTED

1. Is the First Amendment to the United States Constitution implicated by a state law that compels all attorneys to belong and pay annual dues to a state bar association (a public corporation) where state law also grants the bar broad discretion to engage in political and ideological activities, with which some of its members may disagree, unrelated to the regulation of the legal profession?

2. Does a state law requirement that an attorney belong and pay dues to a state bar association violate the attorney's First Amendment rights of speech and association where the compelled fees and association are used to promote political and ideological activities with which the attorney disagrees such as adopting resolutions in favor of ballot initiatives concerning handgun control and a nuclear weapons freeze, lobbying on legislation concerning comparable worth, criminal penalties, and environmental issues, and filing briefs amicus curiae in support of an attack on the constitutionality of California's Victims' Bill of Rights Initiative and supporting prisoners arguing that California prison conditions violated their constitutional rights?

## PARTIES TO THE PROCEEDING

The caption sets forth the names of all of the parties to this action.

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No. 88-1905

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On Writ Of Certiorari in the Supreme Court Of California

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PETITIONERS' OPENING BRIEF

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### OPINIONS BELOW

The decision of the California Supreme Court is reported at 47 Cal. 3d 1152, 767 P.2d 1020 (1989), and is reproduced in the Joint Appendix Volume III (Vol.) commencing at Page 556. The decisions of the California Court of Appeal and the Sacramento County Superior Court are reproduced in the Joint Appendix Vol. III commencing at Pages 477 and 480, respectively.

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### JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a). The decision of the California Supreme Court in this case was entered on February 23, 1989, and was filed that same day. The petition for writ of certiorari was filed on May 24, 1989.

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### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The federal constitutional provisions at issue in this matter are the First and Fourteenth Amendments to the United States Constitution. The California constitutional provision at issue is Article VI, Section 9. Statutory provisions at issue are the provisions of California's State Bar Act, codified at California Business and Professions Code § 6000, *et seq.* The full text of the relevant provisions of that Act and the above-mentioned constitutional provisions are set forth in the appendix at the end of this brief.

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### STATEMENT OF THE CASE

This is an action by attorneys, licensed to practice law in California, to halt the use of their compelled fees and association for political and ideological activities with which they disagree.

The State Bar of California (Bar) was created by statute (Cal. Bus. & Prof. Code § 6001) and is provided for in the California Constitution (Cal. Const. Art. VI, § 9). Established as a "public corporation," the Bar is far more than a regulatory agency. Both the statute and the constitution refer to the Bar as having "members." Cal. Bus. & Prof. Code § 6002; Cal. Const. Art. VI, § 9. The annual fee required of all California attorneys is termed a "membership fee." Cal. Bus. & Prof. Code § 6140. The Bar is specifically exempted from state laws "restricting, or prescribing a mode of procedure for the exercise of powers of state public bodies or agencies." Cal. Bus. & Prof. Code § 6001. Although the Bar must submit its proposed budget to the Legislature, it does not require legislative approval nor is it subjected to the review processes applicable to other state budgetary items, most notably the Governor's line item veto power. *Compare* Cal. Bus. & Prof. Code § 6040.1 *with* Cal. Const. Art. IV, § 10(b). In fact, the Bar may even *compel* the Legislature to maintain the annual membership fee at a certain level. *See* Cal. Bus. & Prof. Code § 6008.5.

The Bar is governed by a body that is a mixture of elected representatives and political appointees. A total of 21 individuals sit on the Bar's Board of Governors. Fifteen members of the board are attorneys that are elected to represent geographic districts. Cal. Bus. & Prof.

Code §§ 6012, 6013. These districts were originally established by the enactment of the State Bar Act in 1927 and have not been reapportioned since.<sup>1</sup> One attorney member is appointed by the board of directors of the California Young Lawyers Association. Cal. Bus. & Prof. Code § 6013.4. The remaining six seats on the board are filled by "public members." One such member is appointed by the Speaker of the Assembly, and one by the Senate Rules Committee. The other four are appointed by the Governor, but must receive Senate confirmation. Cal. Bus. & Prof. Code § 6013.5.

The Board of Governors has broad ranging powers under the State Bar Act. In addition to being exempt from the state procedures outlined above, the board may also appropriate and disburse funds without specific legislative approval or action on the part of the State Controller. Compare Cal. Bus. & Prof. Code § 6028 with Cal. Const. Art XVI, § 7. Of most relevance to this proceeding are the board's powers pursuant to Section 6031:

"The board may aid in all matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice, including, but not by way of limitation, all matters that may advance the professional interests of the members of the State Bar and such matters as concern the relations of the bar with the public."

<sup>1</sup> For the first time in 62 years the Bar is under orders to reapportion those districts. Senate Bill 818 (1989) was signed by the Governor and requires the Bar to prepare new districts by June 30, 1990, and every 10 years thereafter.

As noted above, all attorneys in California are required to be "members" of and pay an annual "membership fee" to the Bar. Cal. Bus. & Prof. Code § 6125. Practicing law without adhering to these requirements is a misdemeanor criminal offense. Cal. Bus. & Prof. Code § 6126. The Bar uses this mandatory membership and compelled fee to promote political and ideological activities unrelated to the regulation of the practice of law.

This action was originally filed in 1982 to challenge the constitutionality of the Bar's political activities.<sup>2</sup> The complaint alleged that the Bar used dues revenues to lobby the Legislature on a variety of issues such as comparable worth, joint custody, automobile warranties, polygraph testing, armor piercing bullets, air pollution, lifeline public utility rates, drug paraphernalia, Aid to Families with Dependent Children, special education, solid waste management plans, child support levels, inmate labor, low rent housing projects, and sex discrimination to name but a few. Joint Appendix (JA) Vol. I at 9-12. It was also alleged that the Bar submitted amicus curiae briefs in various cases including a brief supporting a challenge to the validity of an initiative measure

<sup>2</sup> Since the filing of this action seven years ago, the status of some of the plaintiffs has changed. Eddie Keller has been appointed judge of the Superior Court and Nancy Sweet has been appointed judge of the Municipal Court. As such, neither are compelled to pay annual dues to the Bar during their judicial tenure. Cal. Bus. & Prof. Code § 6002. A. Wells Petersen has retired from the practice of law and has assumed inactive status. Cal. Bus. & Prof. Code § 6005. One of the original defendants, Phyllis Hix, was dismissed from the action prior to the judgment of the court below.

known as the Victims' Bill of Rights and another brief supporting a challenge to California prison conditions. JA Vol. I at 12; Vol. III at 449. The complaint further alleged that the Bar used dues moneys to finance meetings of the Conference of Delegates. During these meetings, a wide variety of resolutions are debated and voted upon. In 1982, the conference adopted resolutions endorsing state ballot measures calling for a nuclear weapons freeze and another concerning handgun control. Resolutions were also adopted supporting comparable worth and supporting adoption of an Equal Rights Amendment to the United States Constitution. JA Vol. I at 13.<sup>3</sup> In its answer, the Bar admitted these factual allegations. JA Vol. II at 226-27.

Petitioners sought a preliminary injunction prohibiting the Bar from using mandatory dues revenues or the name of the State Bar to promote political or ideological causes. This motion was denied by the trial court. JA Vol. II at 222-24. Later, the Bar filed a motion for summary judgment seeking dismissal of petitioners' claims. JA Vol. III at 478. Petitioners filed a cross-motion for partial summary judgment seeking declaratory relief on the issue of whether the Bar violated petitioners' First Amendment rights in using compelled membership and dues to support political causes. In support of the cross-motion, petitioners submitted evidence concerning the

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<sup>3</sup> The complaint also challenged the Bar's use of dues revenues to finance a campaign in support of sitting members of the California Supreme Court during a judicial retention election. The court below ruled that the Bar's conduct in this regard violated state law. That issue is, therefore, not before this Court.

Bar's political activities. JA Vol. II at 234-432. For instance, the Bar has established sections and committees whose purposes include legislative analysis and advocacy. JA Vol. II at 264-65, 269-79, 280-82. Sections of the Bar are self funded except for legal, clerical, and administrative support which are financed by dues revenues. JA Vol. II at 264, 267. Committees of the Bar are entirely funded by dues revenues. The Bar maintains committees on Administration of Justice, Condemnation, Ethnic Minority Relations, Environment, and Human Rights, among others. JA Vol. II at 265-67. Bar sections exist for several substantive areas of the law including antitrust, criminal, and family law. JA Vol. II at 264-65. Both the committees and sections receive substantial financial support from mandatory dues revenues. JA Vol. II at 267, 282-366.

The trial court granted the Bar's motion for summary judgment and denied petitioners' cross-motion. JA Vol. III at 479. The trial court ruled that because the Bar was a state agency, the First Amendment did not restrict the Bar's activities. JA Vol. III at 478. The Court of Appeal reversed, ruling that the *Abood* line of cases were applicable to integrated bar associations. JA Vol. III at 482. The California Supreme Court reversed this part of the judgment of the Court of Appeal. JA Vol. III at 556.

Adopting a rationale similar to that of the trial court, the California Supreme Court ruled that the Bar was a government agency, and as such the *Abood* line of cases did not apply. JA Vol. III at 575-76. Instead, the court ruled that the only limitation on Bar activities was that contained in the statute:



"Accordingly, we conclude the bar may use dues to finance all activities germane to its statutory purpose, a phrase we construe broadly to permit the bar to comment generally upon proposed legislation or pending litigation." JA Vol. III at 558.

The court emphasized the breadth of the Bar's authority. Noting that the Bar was authorized to advance the "administration of justice," the court ruled:

"In the context of lobbying and amicus curiae activities, this language should be read broadly. Laws are the business of lawyers. . . . Whatever the subject of the proposed law, it is likely that among the members of the State Bar are some with the needed expertise, whose collective advice can lead to significant improvements in the legislative proposal." JA Vol. III at 579.

Noting the conflict between the decision of the California Supreme Court and the decisions of other courts in similar cases, petitioners petitioned this Court for a writ of certiorari.

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#### SUMMARY OF ARGUMENT

In *Abood v. Detroit Board of Education*, 432 U.S. 209 (1977), this Court confronted for the first time the issue of whether the First Amendment prohibited the expenditure of a dissenter's compelled fees for political and ideological causes. That case concerned "agency shop fees," those fees that nonunion employees are required to pay to the union serving as collective bargaining representative. Before analyzing the issue, the Court turned to its prior decision in *Lathrop v. Donohue*, 367 U.S. 820 (1961), a case

concerning compelled membership in and dues payments to a state bar association. Since the Court was unable to agree on an opinion concerning the constitutionality of bar expenditures, the *Lathrop* decision did not provide any guidance to the Court in *Abood*. The issue before the Court today is somewhat reversed. Having decided in *Abood* the constitutional issue of political uses of a dissenter's compelled fees, does that labor union case provide guidance to the Court in reviewing the constitutionality of bar association expenditures?

The decisions of this Court establish that when the state compels an individual into an expressive association, a significant impingement of the individual's First Amendment rights has taken place. The Court has noted that the rights called into issue in these cases concern the freedom of belief and go to the very heart of the First Amendment. In order to overcome those rights, the state must demonstrate a compelling governmental interest.

The Court's decisions in this area are not limited to the labor union context. In fact, in a number of cases this Court has noted the similarity between compelled fee payments to a collective bargaining representative and compelled membership in a state bar association. The Circuit Courts of Appeals that have considered this issue have also found this Court's decisions in the labor union context dispositive of similar claims concerning integrated bar associations. State Supreme Courts in Michigan and New Hampshire have reached the same conclusion.

The Bar in this case may not shield its conduct by relying on the so-called "government speech" doctrine.

Under that doctrine, it is alleged that government is free to add its own voice to a controversy and may expend general tax revenues for expressive purposes. In the compelled bar association context, however, there is a coercive nexus between the message and the dissenter. The fees are collected from a select population that is occupationally homogeneous, and who are termed "members" of the association spreading the offensive message.

Under the facts of this case, the Bar has violated the First Amendment rights of the petitioners. Whether the state's interest in compelling membership in the Bar is seen as a method of regulating the practice of law, improving the delivery of legal services, or improving the judicial system, none of those interests are advanced by the conduct of the Bar at issue in this case. The Bar's expression of an opinion on topics ranging from national defense to environmental concerns to amendment of the United States Constitution does not advance any legitimate governmental purpose.

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## ARGUMENT

### I

#### MANDATORY MEMBERSHIP IN AND COMPELLED FEE PAYMENTS TO THE STATE BAR IMPLICATE CORE FIRST AMENDMENT LIBERTIES

##### A. The Rulings of This Court Establish That Compelled Association and Fee Payments Implicate Core First Amendment Rights

The issues raised in this case are not new to this Court. They were first raised more than three decades ago in the case of *Railway Employees' Department v. Hanson*,

351 U.S. 225 (1956). In that case employees challenged provisions of the Railway Labor Act authorizing "union shop" contracts that require all employees in a bargaining unit to pay union dues. In *Hanson*, this Court upheld the facial validity of the Railway Labor Act, but reserved for another day decision on whether First Amendment liberties were violated if the union used compelled dues payments for political activities.

The issue returned to this Court in *International Association of Machinists v. Street*, 367 U.S. 740 (1961). The factual record missing in *Hanson* was presented in *Street* and the Court noted the existence of serious constitutional issues. *Id.* at 748-49. Instead of reaching those questions, however, this Court construed the union shop provisions of the Railway Labor Act to prevent the union from using a dissenter's compelled dues payment to advance political or ideological causes unrelated to collective bargaining. *Id.* at 769.

In *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), this Court was again confronted with the issues raised in *Hanson* and *Street*. Unlike the previous decisions, however, the constitutional issues were squarely presented. The Court recognized that "[t]o compel employees financially to support their collective-bargaining representative has an impact on their First Amendment interests." *Id.* at 222. In keeping with the earlier decisions in *Hanson* and *Street*, the Court ruled that the interference with First Amendment rights was justified by the government interest in labor peace and stability. *Id.*

Turning to the issue of union expenditures promoting political and ideological causes unrelated to collective bargaining, this Court described the nature of the First Amendment liberties at stake. The Court noted that First Amendment protection of association for the advancement of ideas was clearly rooted in prior decisions of the Court. *Id.* at 233. Similarly, contributing money to an association "for the purpose of spreading a political message" was also protected by the First Amendment. *Id.* This Court ruled that the First Amendment protections were the same whether an individual was prohibited from making contributions or was compelled to do so. *Id.* The Court went on to describe the nature of the rights at stake as implicating freedom of belief and going to the "heart of the First Amendment." *Id.* at 234.

Again in *Ellis v. Brotherhood of Railway, Airline and Steamship Clerks*, 466 U.S. 435 (1984), this Court noted that "by allowing the union shop at all, we have already countenanced a significant impingement on First Amendment rights." *Id.* at 455. That infringement is justified, however, by the government interest at stake - labor peace and stability. *Id.* at 456.

Most recently, this Court in *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986), reaffirmed its ruling in *Abood* that agency shop agreements (requirements that non-union members pay the union a fee) interfere with the freedom of association for the advancement of ideas. *Id.* at 301. This Court went on to rule that the nature of the First Amendment rights at stake required procedural protections to ensure that those rights would not be violated in the first instance. *Id.* at 302-03.

Throughout this unbroken line of cases, this Court has repeatedly ruled that compelled association with, or fee payments to, a group which the dissenter does not wish to support or associate with, implicates core First Amendment liberties. The Court has not once suggested that the rights at stake in these cases are unimportant or entitled only to a lesser level of protection. Indeed, in the *Abood* decision, this Court described these rights as being at the very heart of the First Amendment. Of course, this does not mean that these rights are absolute. The Court has allowed infringements where necessary to support certain government interests.

In *Abood*, this Court described the necessary government interest as "important." *Abood*, 431 U.S. at 225. In later decisions, however, this Court has indicated that these rights may be overcome only by a "compelling" interest. Specifically, in *Roberts v. United States Jaycees*, 468 U.S. 609 (1984), this Court considered the issue of whether a state could compel a private association to accept certain classes of individuals into their membership. Citing *Abood* for the proposition that the First Amendment protects the right *not* to associate with others, this Court noted that such rights are not absolute.

"Infringements on that right may be justified by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms." *Id.* at 623.

This Court has noted that the compelling state interest test is also applicable in the compelled fee context. *Hudson*, 475 U.S. at 304 n.11.



Nothing on the face of these rulings indicates in any way that they are limited to the labor union context. Instead, as with its decision in *Roberts*, this Court has recognized that the First Amendment protects the right of expression and association and that these rights are implicated by state regulations that compel association with or fee payments to a group involved in political advocacy. As will be demonstrated below, this line of reasoning applies with equal force to compelled membership in and dues payments to a state bar association.

**B. Compelled Membership in and Dues Payments to a State Bar Association Implicate First Amendment Freedoms**

The court below rejected this line of cases as providing the appropriate analytical framework for this case. That court simply ruled that the state bar was not a labor union, but was instead an agency of the State of California. JA Vol. III at 574-75. In refusing to follow the *Hanson* line of cases, the court below not only rejected the decisions of other jurisdictions, but also ignored the rulings of this Court that at least imply that the *Hanson* line of cases apply to the state bar association context.

In *Hanson*, the Court rejected a facial attack on the union shop provision of the Railway Labor Act. Significantly, the Court found the case analogous to compelled membership in a state bar association. *Hanson*, 351 U.S. at 238. Of course, this remark in the *Hanson* opinion is not dispositive. It is also, however, not the only time the Court has noted the similarity between the claims raised

by petitioners in this case and those raised in the labor union context.

This Court has reviewed the constitutionality of compelled membership in a state bar association on one prior occasion. In *Lathrop v. Donohue*, 367 U.S. 820 (1961), the Court rejected a challenge to the *facial* constitutionality of a Wisconsin court order mandating membership in and annual dues payments to a state bar. Again, the Court referred to its decision in *Hanson* as dispositive of the issue of compelled membership. "In our view the case presents a claim of impingement upon freedom of association no different from that which we decided in *Railway Employees' Dept. v. Hanson*." *Lathrop*, 367 U.S. at 842 (plurality opinion). The Court in *Lathrop* was unable to reach the issue presented in this case – whether the Bar violates the rights of dissenters when it uses compelled fees and association to promote political activities unrelated to the practice of the law. The plurality ruled that, as was the case in *Hanson*, the factual record before the Court did not properly present that issue. *Id.* at 848. Five members of this Court were willing to reach the constitutional issue. Three members would have rejected the constitutional claims. *Id.* at 848 (opinion of Harlan, J.); 865 (opinion of Whittaker, J.). The other two members of the Court would have sustained the constitutional objections. *Id.* at 865 (opinion of Black, J.); 877 (opinion of Douglas, J.).

Again in *Abood*, this Court noted the analytical similarities between agency shop and compelled bar associations. After ruling that the constitutional issues avoided in *Hanson* and *Street* were squarely presented, the Court looked to its decision in *Lathrop* for guidance in resolving



those constitutional questions. *Abood*, 431 U.S. at 233 n.29. Of course, since there was no agreement on the constitutional issues in *Lathrop*, the *Abood* Court noted that *Lathrop* did not provide much in the way of guidance. Significantly, however, the Court believed the two situations to be sufficiently similar so that the holdings in one case would at least provide guidance in the other.

Although this Court has yet to confront this issue directly, several other courts have. With the exception of the decision here under review, they are nearly unanimous in their application of the *Hanson* line of cases.

In *Arrow v. Dow*, 544 F. Supp. 458 (D.N.M. 1982), the Federal District Court upheld a challenge to the use of mandatory bar fees by the New Mexico Bar to lobby the New Mexico Legislature. The court relied on this Court's rulings in *Hanson*, *Street*, and *Abood* to conclude that the New Mexico Bar's use of mandatory fees for political activities implicated First Amendment liberties. 544 F. Supp. at 460. The New Mexico Bar urged that its lobbying activities should nonetheless be allowed since they served "to promote the administration of justice or improvement of the legal system." *Id.* at 462. The court rejected the bar's argument as an attempt to create "an all-encompassing exception to the rule of *Abood*." *Id.*

The federal courts have reached similar conclusions regarding the activities of the Puerto Rico Bar. In *Romany v. Colegio de Abogados de Puerto Rico*, 742 F.2d 32 (1st Cir. 1984), the First Circuit reversed a remedial order of the District Court on the grounds that the lower court should have abstained from jurisdiction in the case. *Id.* at 40. The Circuit Court affirmed the lower court's ruling,

however, that the Colegio's use of mandatory dues to promote political causes violated dissenters' First Amendment rights. Relying on *Abood*, the Circuit Court noted that even though the federal courts should abstain in the case, the importance of the First Amendment rights at stake entitled the dissenters to interim relief from the federal courts. *Id.* at 44. In 1988, the District Court ruled that the Puerto Rico courts had failed to remedy the situation. The court ruled that the Colegio's ideological activity was so pervasive as to make mandatory membership itself unconstitutional. *Schneider v. Colegio de Abogados de Puerto Rico*, 682 F. Supp. 674, 690 (D.P.R. 1988).

Both the Eleventh and Third Circuits have reached similar conclusions. In *Hollar v. Government of the Virgin Islands*, 857 F.2d 163 (3d Cir. 1988), the Third Circuit relied on this Court's decision in *Abood* to analyze an attack on the activities of the Virgin Islands Bar. That court ruled that an integrated bar could constitutionally use compelled fees to express opinions if the cause at issue was "germane to the purpose underlying [the bar's] integration, i.e., the furtherance of the administration of justice." *Id.* at 170.

The Eleventh Circuit's decision was even more broad ranging. In *Gibson v. The Florida Bar*, 798 F.2d 1564 (11th Cir. 1986), the court again relied on *Hanson* and *Abood* to analyze an attack on the political activities of an integrated bar association. Finding this Court's decision in *Abood* persuasive in the bar context, the Circuit Court ruled that the Florida Bar may use mandatory dues to finance lobbying "only to the extent that it assumes a political or ideological position on matters that are germane to the Bar's stated purposes." *Gibson*, 798 F.2d

at 1569. The court noted that the bar would have the burden of proving that its "expenditures were constitutionally justified." *Id.* Further, the bar's expenditures would be examined under the compelling state interest/least drastic means test. In other words, even if the bar could show that its lobbying program served a compelling interest, it would still need to show that the interest could not be advanced by an alternative means less harmful to First Amendment liberties. *Id.*

The federal courts are not alone in adopting the *Hanson* line of cases as controlling in questions of political activities by integrated bar associations. A number of state courts have come to the same conclusion. In *Falk v. State Bar of Michigan*, 418 Mich. 270, 342 N.W.2d 504 (1983), the Michigan Supreme Court was unable to reach a majority position on the constitutionality of the activities of the Michigan Bar. While disagreeing on the appropriate conclusion, a clear majority of that court agreed that the First Amendment was implicated by a mandatory bar association's political activities. *Id.* at 509 (opinion of Boyle, J.); 515-16 (opinion of Ryan, J.). The conclusions in those disparate opinions were reached after recognition of the applicability of this Court's ruling in *Abood*. *Id.* at 508 (opinion of Boyle, J.); 516 (opinion of Ryan, J.).

The New Hampshire Supreme Court also found the *Hanson* line of cases controlling. In *Petition of Chapman*, 128 N.H. 24, 509 A.2d 753 (1986), that court acknowledged that political activities by an integrated bar presented "serious risk of infringement of first amendment liberties." *Id.* at 758. Relying on *Abood*, *Street*, and its own inherent power to regulate the legal profession, the New Hampshire Supreme Court upheld a challenge to bar

lobbying on legislative proposals concerning "tort reform." *Id.*

Only one state court has failed to apply the agency fee cases in the state bar context. The Georgia Supreme Court in *Sams v. Olah*, 225 Ga. 497, 169 S.E.2d 790 (1969), rejected a constitutional attack on legislation establishing the Georgia Bar. The decision, issued eight years prior to this Court's ruling in *Abood*, settled the First Amendment challenge by holding that the "State Bar Act does not authorize the organization to engage in political activities." *Id.* at 798.<sup>4</sup>

The California Supreme Court noted the holdings in those cases but rejected their applicability to this case: "None of the bar associations involved in those cases, however, rest upon a constitutional and statutory structure comparable to that of the California State Bar. None involves an extensive degree of legislative involvement and regulation." JA Vol. III at 574. This attempt to distinguish cases on the basis of which branch of state government regulates the bar is without merit.

In terms of constitutional rights, it can make no difference which part of government authored the offending regulation – the effect is still the same. The California Legislature is no more free to violate First Amendment

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<sup>4</sup> The California Supreme Court also referred to a quote in *Sams*: "The State Bar of Georgia is not a labor organization," *Sams*, 169 S.E.2d at 799, as an indication that the Georgia court rejected the agency fee line of cases. JA Vol. III at 574 n.14. In fact, the quoted language is from a portion of the decision rejecting an attack on the Bar Act as violative of Georgia's Right to Work law. *Sams*, 169 S.E.2d at 799.

rights than are the courts of Florida, Puerto Rico, New Hampshire, or New Mexico.<sup>5</sup> Indeed, the creation of a state bar is a legislative act, regardless of which branch of government provided for that creation.

One of the issues in *Lathrop* was whether the case was properly before this Court by way of appeal. At that time, the appeal statute provided for Supreme Court jurisdiction over matters concerning the validity of a state "statute." *Lathrop*, 367 U.S. at 824 (plurality opinion). Since the Wisconsin Bar was created by order of the Wisconsin Supreme Court, there was of course no statute at issue. The plurality ruled that the integration order was legislative in character and that the appeal was proper. *Id.* at 827. It thus makes no difference which branch of government authored the legislative act creating the state bar. The First Amendment analysis must be the same.

### C. The Government Speech Doctrine Does Not Immunize the Bar from First Amendment Scrutiny

The Bar has argued, and the California Supreme Court ruled, that the government speech doctrine shields the Bar from attack on its political activities. The court below held:

"If the bar is considered a governmental agency, then the distinction between revenue derived from mandatory dues and revenue from other sources is immaterial. A governmental agency may use unrestricted revenue, whether derived from taxes, dues, fees, tolls, tuition,

<sup>5</sup> Indeed, the literal command of the First Amendment is aimed at the legislative branch of government.

donation, or other sources, for any purposes within its authority." JA Vol. III at 576.

In making its ruling, the court below identified neither the source of this rule, nor its parameters.

This Court has yet to issue such a sweeping pronouncement and indeed, at least with regard to the expenditure of general tax revenue, the federal requirement of standing may well prevent the issue from ever reaching this Court. See *Doremus v. Board of Education*, 342 U.S. 429, 435 (1952).

The existence of the doctrine is hinted at, however, in various concurring and dissenting opinions authored by members of this Court. In *Lathrop*, for example Justice Harlan's concurring opinion urges that legislatures are free to establish commissions for the purpose of advising the lawmakers on what changes should be made in the law. 367 U.S. at 864. In *Wooley v. Maynard*, 430 U.S. 705 (1977), then Justice Rehnquist suggested in a dissenting opinion that the state was free to spend tax revenues to erect billboards for the purpose of spreading an ideological message. *Id.* at 721 (Rehnquist, J., dissenting). Finally, in *Aboud*, Justice Powell's concurring opinion notes:

"Clearly, a local school board does not need to demonstrate a compelling state interest every time it spends a taxpayer's money in ways the taxpayer finds abhorrent. But the reason for permitting the Government to compel the payment of taxes and to spend money on controversial projects is that the Government is representative of the people. The same cannot be said of a union, which is representative only of one segment of the population, with certain common interests." 431 U.S. at 259 n.13 (opinion of Powell, J.).



The Court need not reach the issue of the precise parameters of the government speech doctrine in this case since the hypothetical situations mentioned above are all distinguishable from the present case. This is not a case of government spending general tax revenues. Nor is it a case of a government spending program established through normal legislative channels. This Court does not review the question in this case of whether a state legislature may establish a commission to advise lawmakers on technical issues. Instead, this Court reviews the activities of an association "which is representative only of one segment of the population, with certain common interests." This was precisely the conclusion reached by the Eleventh Circuit in *Gibson*. 798 F.2d at 1568.

A recent decision of the Third Circuit is in accord with this reasoning. In *United States v. Frame*, 885 F.2d 1119 (3d Cir. 1989), the court reviewed a broad ranging attack on the Beef Promotion and Research Act of 1985. Under that law, cattle producers are assessed a fee of one dollar on each head of cattle sold, for the purpose of financing a national beef promotional campaign. One of the grounds of the challenge was that the compelled fee for promotional activities violated the cattle producer's First Amendment rights. The court rejected the government's argument that the speech at issue was "government speech." Noting then Justice Rehnquist's dissent in *Wooley* and Justice Harlan's concurrence in *Lathrop*, the Third Circuit found the distinguishing fact to be the nature of the association, rather than the nature of the speaker:

"Both the right to be free from compelled expressive association and the right to be free

from compelled affirmation of belief presuppose a coerced nexus between the individual and the specific expressive activity. When the government allocates money from the general tax fund to controversial projects or expressive activities, the nexus between the message and the individual is attenuated. . . . In contrast, where the government requires a publicly identified group to contribute to a fund earmarked for the dissemination of a particular message associated with that group, the government has directly focused its coercive power for expressive purposes." *United States v. Frame*, 885 F.2d at 1132.

This is precisely the case now before this Court. Unlike the expenditure of general tax revenues by a state legislature, there is direct nexus between the dissenting lawyer and the causes promoted by the State Bar. The existence of this nexus establishes petitioners' claim that mandatory membership in and compelled fee payments to the State Bar impact on their First Amendment freedoms. As will be demonstrated below, the Bar's use of that mandatory membership and compelled fee to promote political and ideological causes violated petitioners' First Amendment rights.

## II

### THE BAR VIOLATED PETITIONERS' FIRST AMENDMENT RIGHTS IN THIS CASE

The conclusion that mandatory membership in and compelled dues payments to the State Bar impacts First Amendment rights does not end the analysis in this case. As this Court ruled in *Abood*, these First Amendment rights are not absolute. *Abood*, 431 U.S. at 225-26. To justify an infringement of these rights, however, the Bar



must demonstrate that a compelling governmental interest is served by the compelled association and dues payments. See *Hudson*, 475 U.S. at 303 n.11.

The issue of what if any compelling interests are served by the State Bar was not addressed by the California Supreme Court. That court never reached the First Amendment issue and thus did not have occasion to offer its view on the interests served by the Bar.

Petitioners would concede that one such compelling interest would be the regulation of the practice of law. It is certainly within the province of the State of California to determine that such regulation is best performed by an integrated bar association. Of course, this regulatory interest does not support any of the political or ideological activity here under attack.

Another governmental interest often mentioned in cases concerning bar associations is the advancement of the administration of justice. See, e.g., *Gibson*, 798 F.2d at 1569; *Arrow*, 544 F. Supp. at 462. The problem with this purported interest is that, at least as used by the California Supreme Court, it is a term without definition. According to that court, anything having to do with any law relates to the improvement of the administration of justice. JA Vol. III at 579. As was the case in *Arrow*, this purported interest would become an "all-encompassing exception to the rule of *Abood*." 544 F. Supp. at 462.

In contrast to the decision of the California Supreme Court, the California Court of Appeal did attempt to define what was meant by the "administration of justice." That court ruled that the term related to the mechanics of how the legal system operated. JA Vol. III at 517 n.13. The

dissenting opinion in the California Supreme Court viewed the state's interest as relating to the delivery of quality legal services and improvement of the legal profession. JA Vol. III at 611. In either case, the activities of the Bar challenged by petitioners could not withstand scrutiny.

The lobbying activities of the Bar covered the whole spectrum of issues from family law to environmental concerns to criminal penalties. JA Vol. I at 9-12. None of these related to the operation of the court system, delivery of legal services, or improvement of the profession. Similarly, resolutions of the Conference of Delegates ranged from handgun control to amendment of the United States Constitution to foreign policy and national defense. JA Vol. I at 13; Vol. II at 369-409. It would be difficult to imagine topics more remote from a state interest in improving the legal system.

Finally, the Bar's amicus efforts in attacking the Victims' Bill of Rights Initiative and supporting prisoners' constitutional challenge to state prison conditions are wholly unrelated to the delivery of legal services or the mechanics of the judicial system. The Bar has failed to establish a state interest, compelling or otherwise, that would support such activities.

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## CONCLUSION

The decision of the California Supreme Court conflicts not only with the rulings of other state Supreme Courts and Federal Circuit Courts of Appeals, but also

with the rulings of this Court. State regulations compelling membership in and fee payments to an expressive association implicate fundamental First Amendment liberties. Absent a compelling governmental interest, such requirements must fall.

Although the State of California has a compelling interest in regulating the practice of law, that interest does not support the political and ideological activity of the State Bar. Nor are the Bar's activities supported by any state interest in the improvement of the legal system or delivery of legal services. The challenged activities are clearly beyond the scope of any legitimate governmental interest. Compelling petitioners to support such activities through their compulsory membership and fee payments therefore violates the First Amendment of the United States Constitution.

Petitioners urge this Court to reverse the judgment of the California Supreme Court and to declare compulsory support of the Bar's political activity unconstitutional.

DATED: November, 1989.

Respectfully submitted,

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## STATUTORY APPENDIX

UNITED STATES CONSTITUTION,  
AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

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UNITED STATES CONSTITUTION,  
AMENDMENT XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to



any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

## CALIFORNIA CONSTITUTION, ARTICLE VI

SEC. 9. The State Bar of California is a public corporation. Every person admitted and licensed to practice law in this State is and shall be a member of the State Bar except while holding office as a judge of a court of record. *[New section adopted November 8, 1966.]*

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### SELECTED PROVISIONS OF THE STATE BAR ACT CALIFORNIA BUSINESS AND PROFESSIONS CODE

#### § 6000. Short title

This chapter of the Business and Professions Code constitutes the chapter on attorneys. It may be cited as the State Bar Act.

#### § 6001. State bar; perpetual succession; seal; powers; revenue; laws applicable

The State Bar of California is a public corporation. It is hereinafter designated as the State Bar.

The State Bar has perpetual succession and a seal and it may sue and be sued. It may, for the purpose of carrying into effect and promoting its objectives:

(a) Make contracts.

(b) Borrow money, contract debts, issue bonds, notes and debentures and secure the payment or performance of its obligations.

(c) Own, hold, use, manage and deal in and with real and personal property.

(d) Construct, alter, maintain and repair buildings and other improvements to real property.

(e) Purchase, lease, obtain options upon, acquire by gift, bequest, devise or otherwise, any real or personal property or any interest therein.

(f) Sell, lease, exchange, convey, transfer, assign, encumber, pledge, dispose of any of its real or personal property or any interest therein, including without limitation all or any portion of its income or revenues from membership fees paid or payable by members.

(g) Do all other acts incidental to the foregoing or necessary or expedient for the administration of its affairs and the attainment of its purposes.

Pursuant to those powers enumerated in subdivisions (a) to (g) inclusive, it is recognized that the State Bar has authority to raise revenue in addition to that provided for in Section 6140 and other statutory provisions. The State Bar is empowered to raise that additional revenue by any lawful means, including, but not limited to, the creation of foundations or not-for-profit corporations.

No law of this state restricting, or prescribing a mode of procedure for the exercise of powers of state public

bodies or state agencies, or classes thereof, including, but not by way of limitation, the provisions contained in Division 3 (commencing with Section 11000), Division 4 (commencing with Section 16100), and Part 1 (commencing with Section 18000) and Part 2 (commencing with Section 18500) of Division 5, of Title 2 of the Government Code, shall be applicable to the State Bar, unless the Legislature expressly so declares.

#### **§ 6002. Members**

The members of the State Bar are all persons admitted and licensed to practice law in this state except justices and judges of courts of record during their continuance in office.

#### **§ 6002.1. Official membership records; maintenance of information; service of notice initiating proceedings; availability of information on records; form for reports**

(a) A member of the State Bar shall maintain all of the following on the official membership records of the State Bar:

(1) The member's current office address and telephone number or, if no office is maintained, the address to be used for State Bar purposes or purposes of the agency charged with attorney discipline.

(2) All specialties in which the member is certified.

(3) Any other jurisdictions in which the member is admitted and the dates of his or her admission.

(4) The jurisdiction, and the nature and date of any discipline imposed by another jurisdiction, including the terms and conditions of any probation imposed, and, if suspended or disbarred in another jurisdiction, the date of any reinstatement in that jurisdiction.

(5) Such other information as may be required by agreement with or by conditions of probation imposed by the agency charged with attorney discipline.

A member shall notify the membership records office of the State Bar of any change in the information required by paragraphs (1), (4), and (5) within 30 days of any change and of any change in the information required by paragraphs (2) and (3) on or before the first day of February of each year.

(b) Every former member of the State Bar who has been ordered by the Supreme Court to comply with Rule 955 of the California Rules of Court shall maintain on the official membership records of the State Bar the former member's current address and within 10 days after any change therein, shall file a change of address with the membership records office of the State Bar until such time as the former member is no longer subject to the order.

(c) The notice initiating a proceeding conducted under this chapter may be served upon the member or former member of the State Bar to whom it is directed by certified mail, return receipt requested, addressed to the member or former member at the latest address shown on the official membership records of the State Bar. The service is complete at the time of the mailing but any prescribed period of notice and any right or duty to do any act or make any response within any prescribed

period or on a date certain after the notice is served by mail shall be extended five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States. A member of the State Bar or former member may waive the requirements of this subdivision and may, with the written consent of another member of the State Bar, designate that other member to receive service of any notice or papers in any proceeding conducted under this chapter.

(d) The State Bar shall not make available to the general public the information specified in paragraph (5) of subdivision (a) unless required to be made so available by a condition of probation; it is, however, available to the State Bar, the Supreme Court, or the agency charged with attorney discipline.

(e) The State Bar may develop a prescribed form for the making of reports required by this section, usage of which it may require by rule or regulation.

#### **§ 6003. Classes of members**

Members of the State Bar are divided into two classes:

- (a) Active members.
- (b) Inactive members.

#### **§ 6004. Active members**

Every member of the State Bar is an active member

until as in Section 6007 of this code provided or at his request, he is enrolled as an inactive member.

**§ 6005. Inactive members**

Inactive members are those members who have requested that they be enrolled as inactive members or who have been enrolled as inactive members by action of the board of governors as in Section 6007 of this code provided.

**§ 6006. Retirement from practice; privileges of inactive members**

Active members who retire from practice shall be enrolled as inactive members at their request.

Inactive members are not entitled to hold office or vote or practice law. Those who are enrolled as inactive members at their request may, on application and payment of all fees required, become active members. Those who are enrolled as inactive members as in Section 6007 of this code provided may become active members as in said Section 6007 provided.

Inactive members have such other privileges, not inconsistent with this chapter, as the board of governors provides.

**§ 6007. Involuntary treatment or confinement; involuntary, inactive enrollment; restoration to capacity; interim remedies**

(a) When a member requires involuntary treatment pursuant to Article 6 (commencing with Section 5300) of

Chapter 2 of Division 5 of, or Part 2 (commencing with Section 6250) of Division 6 of the Welfare and Institutions Code, or when under an order pursuant to Section 3051, 3106.5, or 3152 of the Welfare and Institutions Code he or she has been placed in or returned to inpatient status at the California Rehabilitation Center or its branches, or when he or she has been determined insane or mentally incompetent and is confined for treatment or placed on outpatient status pursuant to the Penal Code, or on account of his or her mental condition a guardian or conservator, for his or her estate or person or both, has been appointed, the Board of Governors or an officer of the State Bar shall enroll the member as an inactive member.

The clerk of any court making an order containing any of the determinations or adjudications referred to in the immediately preceding paragraph shall send a certified copy of that order to the State Bar at the same time that the order is entered.

The clerk of any court with which is filed a notice of certification for intensive treatment pursuant to Article 4 (commencing with Section 5250) of Chapter 2 of Division 5 of the Welfare and Institutions Code, upon receipt of the notice, shall transmit a certified copy of it to the State Bar.

**§ 6008. Property; exemption from taxation**

All property of the State Bar is hereby declared to be held for essential public and governmental purposes in the judicial branch of the government and such property is exempt from all taxes of the State or any city, city and



county, district, public corporation, or other political subdivision, public body or public agency.

#### **§ 6008.1 Bonds, notes, etc.; liability; approval**

No bond, note, debenture, evidence of indebtedness, mortgage, deed of trust, assignment, pledge, contract, lease, agreement or other contractual obligation of the State Bar shall:

- (a) Create a debt or other liability of the State nor of any entity other than the State Bar (or any successor public corporation).
- (b) Create any personal liability on the part of the members of the State Bar or the members of the board of governors or any person executing the same, by reason of the issuance or execution thereof.
- (c) Be required to be approved or authorized under the provisions of any other law or regulation of this State.

#### **§ 6008.2 Bonds, notes, etc.; exemption from taxation**

Bonds, notes, debentures and other evidences of indebtedness of the State Bar are hereby declared to be issued for essential public and governmental purposes in the judicial branch of the government and, together with interest thereon and income therefrom, shall be exempt from taxes.

#### **§ 6008.3 Default upon obligations; rights and remedies**

The State Bar may vest in any obligee or trustee the right, in the event of default upon any obligation of the

State Bar, to take possession of property of the State Bar, cause the appointment of a receiver for such property, acquire title thereto through foreclosure proceedings, and exercise such other rights and remedies as may be mutually agreed upon between the State Bar and the holder or proposed holder of any such obligation.

#### **§ 6008.4 Exercise of powers by board of governors**

All powers granted to the State Bar by Sections 6001 and 6008.3 may be exercised and carried out by action of its board of governors. In any resolution, indenture, contract, agreement, or other instrument providing for, creating, or otherwise relating to, any obligation of the State Bar, the board may make, fix, and provide such terms, conditions, covenants, restrictions, and other provisions as the board deems necessary or desirable to facilitate the creation, issuance, or sale of such obligation or to provide for the payment or security of such obligation and any interest thereon, including, but not limited to, covenants and agreements relating to fixing and maintaining membership fees.

#### **§ 6008.5 Pledge of membership fees; prohibition against reduction of maximum fee**

Whenever the board has pledged, placed a charge upon, or otherwise made available all or any portion of the income or revenue from membership fees for the payment or security of an obligation of the State Bar or any interest thereon, and so long as any such obligation or any interest thereon remains unpaid, the Legislature shall not reduce the maximum membership fee below the

maximum in effect at the time such obligation is created or incurred, and the provisions of this section shall constitute a covenant to the holder or holders of any such obligation.

#### **§ 6010. Board of governors in general**

The State Bar is governed by a board known as the board of governors of the State Bar. The board has the powers and duties conferred by this chapter.

#### **§ 6011. Number of members and president of state bar**

The board consists of 22 members and the President of the State Bar.

#### **§ 6012. Bar districts**

For the purpose of conducting elections of the attorney members of the board, the state is divided into State Bar districts constituted by combining counties and designated by numbers, as follows:

(a) State Bar District No. 1, comprising the following counties: Del Norte, Humboldt, Mendocino, Siskiyou, Modoc, Trinity, Shasta, Lassen, Plumas, Sierra, Tehama, Glenn, Colusa, Butte, Yuba, Sutter, Lake, Nevada and Placer.

(b) State Bar District No. 2, comprising the following counties: El Dorado, Amador, Calaveras, Alpine, Tuolumne, Mariposa, Mono, Sacramento, San Joaquin, Yolo, Napa, Solano, Sonoma and Marin.

(c) State Bar District No. 3, comprising the following counties: Contra Costa, Alameda and Santa Clara.

(d) State Bar District No. 4, comprising the City and County of San Francisco.

(e) State Bar District No. 5, comprising the following counties: Stanislaus, Merced, Madera, Fresno, Kings, Tulare and Kern.

(f) State Bar District No. 6, comprising the following counties: San Mateo, Santa Cruz, San Benito, Monterey, San Luis Obispo, Santa Barbara and Ventura.

(g) State Bar District No. 7, comprising the County of Los Angeles.

(h) State Bar District No. 8, comprising the following counties: Inyo, San Bernardino, Orange and Riverside.

#### **§ 6013. Membership from bar districts and young lawyers association**

The attorney membership of the board is composed of:

(a) One member from each of State Bar Districts 1, 2, 5, 6, 8 and 9.

(b) Two members from each of State Bar Districts 3 and 4.

(c) Five members from State Bar District 7.

(d) One member from the membership of the California Young Lawyers Association appointed pursuant to Section 6013.4.

**§ 6013.4. Member from Young Lawyers Association; term; vacancy**

Notwithstanding any other provision of law, one member of the board shall be elected by the board of directors of the California Young Lawyers Association, from the membership of that association.

Such member shall serve for a term of one year, commencing at the conclusion of the annual meeting next succeeding the election and is eligible for reelection. A vacancy shall be filled by election in the manner provided herein for the unexpired term.

**§ 6013.5. Public members; appointment; qualifications; term**

Notwithstanding any other provision of law, six members of the board shall be members of the public who have never been members of the State Bar or admitted to practice before any court in the United States. They shall be appointed through 1982 by the Governor, subject to the confirmation of the Senate.

Each of such members shall serve for a term of three years, commencing at the conclusion of the annual meeting next succeeding his appointment, except that for the initial term after enactment of this section, two shall serve for one year, two for two years, and the other two for three years, as determined by lot.

In 1983 one public member shall be appointed by the Senate Committee on Rules and one public member shall be appointed by the Speaker of the Assembly

For each of the years, 1984 and 1985, two public members shall be appointed by the Governor, subject to the confirmation of the Senate.

Each respective appointing authority shall fill any vacancy in and make any reappointment to each respective office.

**§ 6013.6. Attorney employee of public agency; member of board of governors; job-related benefit status**

(a) Except as provided in subdivision (b), any attorney who is a full-time employee of any public agency and who serves as a member of the Board of Governors of the State Bar shall not suffer any loss of rights, promotions, salary increases, retirement benefits, tenure, or other job-related benefits, which the attorney would otherwise have been entitled to receive.

(b) Notwithstanding the provisions of subdivision (a), any public agency which employs an attorney who serves as a member of the Board of Governors of the State Bar may reduce the attorney's salary, but no other right or job-related benefit, pro rata to the extent that the attorney does not work the number of hours required by statute or written regulation to be worked by other employees of the same grade in any particular pay period and the attorney does not claim available leave time. The attorney shall be afforded the opportunity to perform job duties during other than regular working hours if such a work arrangement is practical and would not be a burden to the public agency.

(c) The Legislature finds that service as a member of the Board of Governors of the State Bar by an attorney employed by a public agency is in the public interest.

This section shall remain in effect only until January 1, 1990, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1990, deletes or extends that date.

#### **§ 6014. Election of members; successive terms**

Five of the attorney members of the board are elected each year for terms of three years each.

No person shall be nominated for, or eligible to, membership on the board who has served as a member for three years next preceding the expiration of his current term, or would have so served if his current term were completed.

Within the meaning of this section, the time intervening between any two successive annual meetings is deemed to be one year.

#### **§ 6015. Qualifications of members**

No person is eligible for attorney membership on the board unless he or she is an active member of the State Bar and unless he or she maintains his or her principal office for the practice of law within the State Bar district from which he or she is elected.

One member of the board from State Bar District 7 elected in 1939, and any successor to this member, at the time of his or her election shall, and any member from

the district may, maintain his or her principal office for the practice of law outside of the City of Los Angeles.

#### **§ 6016. Tenure of members; vacancies; interim board**

The term of office of each attorney member of the board shall commence at the conclusion of the annual meeting next succeeding his election, and he shall hold office until his successor is elected and qualified.

Vacancies in the board of governors shall be filled by the board by special election or by appointment for the unexpired term.

The board of governors may provide by rule for an interim board to act in the place and stead of the board when because of vacancies during terms of office there is less than a quorum of the board.

#### **§ 6017. Terms of members from respective bar districts**

Members of the board shall be elected for terms of three years as follows:

(a) In 1939, one member each shall be elected from State Bar Districts 4, 6 and 8 two members from State Bar District 7.

(b) In 1940, one member each shall be elected from State Bar Districts 1, 3, 5, 7 and 9.

(c) In 1941, one member each shall be elected from State Bar Districts 2, 3 and 4 and two members shall be elected from State Bar District 7.



Thereafter, five members of the board shall be elected each year, each for three year terms, from the State Bar Districts in which vacancies will occur in that year by reason of the expiration of the term of office of a member theretofore elected thereto.

#### § 6018. Nominations; qualification to vote

Nominations of members of the board shall be by petition signed by at least twenty persons entitled to vote for such nominees.

Only active members of the State Bar maintaining their principal offices for the practice of the law in the respective State Bar districts shall be entitled to vote for the member or members of the board therefrom.

#### § 6019. Elections

Each place upon the board for which a member is to be elected shall for the purposes of the election be deemed a separate office.

If only one member seeks election to an office, the member is deemed elected. If two or more members seek election to the same office, the election shall be by ballot. The ballots shall be mailed to those entitled to vote at least twenty days prior to the date of canvassing. The ballots and shall be returned by mail to the principal office of the State Bar, where they shall be canvassed at least five days prior to the ensuing annual meeting. At the annual meeting, the count shall be certified and the result officially declared.

In all other respects the elections shall be as the board may by rule direct.

#### § 6020. Officers in general

The officers of the State Bar are a president, four vice presidents, a secretary and a treasurer. One of the vice presidents may also be elected to the office of treasurer.

#### § 6021. Election; time; assumption of duties

Within the period of 180 days next preceding the annual meeting, the board, at a meeting called for that purpose, shall elect the president, vice presidents and treasurer for the ensuing year. The president shall be elected from among those members of the board whose terms on the board expire that year, or if no such member is able and willing to serve, then from among the board members who have completed at least one or more years of their terms.

The other officers shall be elected from among the board members who have at least one or more years to complete their respective terms.

The newly elected president, vice presidents and treasurer shall assume the duties of their respective offices at the conclusion of the annual meeting following their election.

#### § 6022. Secretary

The secretary shall be selected annually by the board and need not be a member of the State Bar.

**§ 6023. Continuance in office**

The officers of the State Bar shall continue in office until their successors are elected and qualify.

**§ 6024. Duties of officers**

The president shall preside at all meetings of the State Bar and of the board, and in the event of his or her absence or inability to act, one of the vice presidents shall preside.

Other duties of the president and the vice presidents, and the duties of the secretary and the treasurer, shall be such as the board may prescribe. The president may vote only in the case of a tie vote of the other members of the board present and voting.

**§ 6025. Rules and regulations; determination as to meetings and quorum**

Subject to the laws of this State, the board may formulate and declare rules and regulations necessary or expedient for the carrying out of this chapter.

The board shall by rule fix the time and place of the annual meeting of the State Bar, the manner of calling special meetings thereof and determine what number shall constitute a quorum of the State Bar.

**§ 6026. Reports; matters considered at meeting**

At the annual meeting, reports of the proceedings by the board since the last annual meeting, reports of other

officers and committees and recommendations of the board shall be received.

Matters of interest pertaining to the State Bar and the administration of justice may be considered and acted upon.

**§ 6026.5 Public meetings; exceptions**

Every meeting of the board shall be open to the public except those meetings, or portions thereof, relating to:

(a) Consultation with counsel concerning pending or prospective litigation.

(b) Involuntary enrollment of active members as inactive members due to mental infirmity or illness or addiction to intoxicants or drugs.

(c) The qualifications of judicial appointees, nominees, or candidates.

(d) The appointment, employment or dismissal of an employee, consultant, or officer of the State Bar or to hear complaints or charges brought against such employee, consultant, or officer unless such person requests a public hearing.

(e) Disciplinary investigations and proceedings, including resignations with disciplinary investigations or proceedings pending, and reinstatement proceedings.

(f) Appeals to the board from decisions of the Board of Legal Specialization refusing to certify or recertify an applicant or suspending or revoking a specialist's certificate.

(g) Appointments to or removals from committees, boards, or other entities.

(h) Joint meetings with agencies provided in Article VI of the California Constitution.

#### § 6027. Special meetings

Special meetings of the State Bar may be held at such times and places as the board provides.

#### § 6028. Payment of expenses; compensation

(a) The board may make appropriations and disbursements from the funds of the State Bar to pay all necessary expenses for effectuating the purposes of this chapter.

(b) Except as provided in subdivision (c), no member of the board shall receive any other compensation than his or her necessary expenses connected with the performance of his or her duties as a member of the board.

(c) Public members of the board appointed pursuant to the provisions of Section 6013.5, public members of the examining committee appointed pursuant to Section 6046.5, and public members of the State Bar Court appointed pursuant to Section 6086.6 shall receive, out of funds appropriated by the board for this purpose, fifty dollars (\$50) per day for each actually spent in the discharge of official duties, but in no event shall this payment exceed five hundred dollars (\$500) per month. In addition, these public members shall receive, out of funds

appropriated by the board, necessary expenses connected with the performance of their duties.

#### § 6029. Appointment of committees, officers and employees; salaries and expenses

The board may appoint such committees, officers and employees as it deems necessary or proper, and fix and pay salaries and necessary expenses.

#### § 6030. Executive functions; enforcement of chapter; injunction

The board shall be charged with the executive function of the State Bar and the enforcement of the provisions of this chapter. The violation or threatened violation of any provision of Articles 7 (commencing with Section 6125) and 9 (commencing with Section 6150) of this chapter may be enjoined in a civil action brought in the superior court by the State Bar and no undertaking shall be required of the State Bar.

#### § 6031. Functions in aid of jurisprudence, justice, professional matters and public relations; evaluations of specific justices

(a) The board may aid in all matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice, including, but not by way of limitation, all matters that may advance the professional interests of the members of the State Bar and such matters as concern the relations of the bar with the public.



(b) Notwithstanding this section or any other provision of law, the board shall not conduct or participate in, or authorize any committee, agency, employee, or commission of the State Bar to conduct or participate in any evaluation, review, or report on the qualifications, integrity, diligence, or judicial ability of any specific justice of a court provided for in Section 2 or 3 of Article VI of the California Constitution without prior review and statutory authorization by the Legislature.

The provisions of this subdivision shall not be construed to prohibit a member of the State Bar from conducting or participating in such an evaluation, review, or report in his or her individual capacity.

The provisions of this subdivision shall not be construed to prohibit an evaluation of potential judicial appointees or nominees as authorized by Section 12011.5 of the Government Code.

**§ 6032. Affirmative action and equal employment opportunity program; minority and women business enterprise program; study**

Subject to the approval of the Committees on Judiciary of each house of the Legislature, the board shall contract with an independent expert for the purpose of conducting a comprehensive study of the State Bar's affirmative action and equal employment opportunity program with regard to its employees, of assisting the State Bar with respect to those programs, and with developing and implementing a minority and women business enterprise program. A final report shall be submitted to

each of the Committees on Judiciary no later than September 1, 1989.

Moneys for the support of the independent expert shall be established and paid in accordance with the provisions of Section 6140.9.

**§ 6033. Malpractice insurance survey; report; costs**

(a) The board shall conduct a scientifically valid survey of a representative sample of the active membership for the purpose of compiling data on the subject of legal malpractice insurance.

Members shall fully and truthfully complete the survey or be subject to those discipline measures prescribed by the board. Survey responses shall be confidential.

(b) The board shall submit a final report on the results of the survey to the Legislature on or before December 15, 1987.

(c) For the 1988-89 fiscal year, the board may increase the annual membership fee fixed by subdivision (a) of Section 6140 by an additional amount not to exceed one dollar (\$1). This additional amount shall only be applied for costs incurred by the board in complying with the requirements of this section.

**§ 6063. Fees**

Applicants for admission to practice shall pay such reasonable fees, fixed by the board, as may be necessary to defray the expense of administering the provisions of this chapter, relating to admission to practice. These fees

shall be collected by the examining committee and paid into the treasury of the State Bar.

#### **§ 6064. Admission**

Upon certification by the examining committee that the applicant has fulfilled the requirements for admission to practice law, the Supreme Court may admit such applicant as an attorney at law in all the courts of this State and may direct an order to be entered upon its records to that effect. A certificate of admission thereupon shall be given to the applicant by the clerk of the court.

#### **§ 6076. Rules of professional conduct; formulation**

With the approval of the Supreme Court, the Board of Governors may formulate and enforce rules of professional conduct for all members of the bar in the State.

#### **§ 6077. Effect of rules; discipline for breach**

The rules of professional conduct adopted by the board, when approved by the Supreme Court, are binding upon all members of the State Bar.

For a wilful breach of any of these rules, the board has power to discipline members of the State Bar by reproof, public or private, or to recommend to the Supreme Court the suspension from practice for a period not exceeding three years of members of the State Bar.

#### **§ 6078. Power to discipline and reinstate**

After a hearing for any of the causes set forth in the laws of the State of California warranting disbarment, suspension or other discipline, the board has the power to recommend to the Supreme Court the disbarment or suspension from practice of members or to discipline them by reproof, public or private, without such recommendation.

The board may pass upon all petitions for reinstatement.

#### **§ 6125. Necessity of active membership in state bar**

No person shall practice law in this State unless he is an active member of the State Bar.

#### **§ 6126. Unauthorized practice, advertising or holding out; penalties**

(a) Any person advertising or holding himself or herself out as practicing or entitled to practice law or otherwise practicing law who is not an active member of the State Bar, is guilty of a misdemeanor.

(b) Any person who has been involuntarily enrolled as an inactive member of the State Bar, or has been suspended from membership from the State Bar, or has been disbarred, or has resigned from the State Bar with charges pending, and thereafter advertises or holds himself or herself out as practicing or otherwise entitled to practice law, is guilty of a crime punishable by imprisonment in the state prison or county jail. However, any person who has been involuntarily enrolled as an inactive

member of the State Bar pursuant to paragraph (1) of subdivision (e) of Section 6007 and who knowingly thereafter advertises or holds himself or herself out as practicing or otherwise entitled to practice law, is guilty of a crime punishable by imprisonment in the state prison or county jail.

(c) The willful failure of a member of the State Bar, or one who has resigned or been disbarred, to comply with an order of the Supreme Court to comply with Rule 955, constitutes a crime punishable by imprisonment in the state prison or county jail.

**§ 6140. Membership fees; payment; duration of section**

(a) The board shall fix the annual membership fee for 1989 as follows:

(1) For active members who have been admitted to the practice of law in this state for three years or longer preceding the first day of February of the year for which the fee is payable, at the sum of two hundred forty-five dollars (\$245).

(2) For active members who have been admitted to the practice of law in this state for less than three years but more than one year preceding the first day of February of the year for which the fee is payable, at the sum of one hundred seventy-seven dollars (\$177).

(3) For active members who have been admitted to the practice of law in this state during, or for less than one year preceding the first day of February of, the year for which the fee is payable, at a sum not exceeding one hundred forty-six dollars (\$146).

(b) The board shall fix the annual membership fee for 1990 as follows:

(1) For active members who have been admitted to the practice of law in this state for three years or longer preceding the first day of February of the year for which the fee is payable, at the sum of two hundred sixty-eight dollars (\$268).

(2) For active members who have been admitted to the practice of law in this state for less than three years but more than one year preceding the first day of February of the year for which the fee is payable, at the sum of two hundred dollars (\$200).

(3) For active members who have been admitted to the practice of law in this state during, or for less than one year preceding the first day of February of, the year for which the fee is payable, at a sum not exceeding one hundred sixty-nine dollars (\$169).

(c) The annual membership fee for active members is payable on or before the first day of February of each year. If the board finds it appropriate and feasible, it may provide by rule for payment of fees on an installment basis with interest, by credit card, or other means, and may charge members choosing any alternative method of payment an additional fee to defray costs incurred by that election.

This section shall remain in effect only until January 1, 1991, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1991, deletes or extends that date.



**§ 6140.1. Proposed baseline and proposed final budgets; contents; fiscal bill; submission of documents; budget change proposals**

The State Bar annually shall submit its proposed baseline budget for the following fiscal year to the appropriate fiscal committees of the Legislature and the Joint Legislative Budget Committee by November 15, and its proposed final budget by February 15, so that the budget can be reviewed and approved in conjunction with any bill that would authorize the imposition of membership dues. Each proposed budget shall include the estimated revenues, expenditures, and staffing levels for all of the programs and funds administered by the State Bar. Any bill that authorizes the imposition of membership dues shall be a fiscal bill shall be referred to the appropriate fiscal committees; provided, however, that the bill may be approved by a majority vote.

The State Bar shall submit the budget documents in a form comparable to the documents prepared by state departments for inclusion in the Governor's Budget and the salaries and wages supplement. In addition, the bar shall provide supplementary schedules detailing operating expenses and equipment, all revenue sources, any reimbursements or interfund transfers, fund balances, and other related supporting documentation. The bar shall submit budget change proposals with its final budget, explaining the need for any differences between the current and proposed budgets.

**§ 6140.2. Reports to judiciary committees on procedural changes and improvements in disciplinary system; reduction of complaints in inventory; goal for timely disposition of complaints**

(a) On or before April 1, 1986, and June 1, 1986, the State Bar shall submit reports to the Judiciary Committees of the California State Senate and Assembly on the procedural changes and improvements which have been made in the State Bar disciplinary system and what effect these changes have had on the number of complaints pending, the time required to process these complaints, and the progress made in reducing the backlog of complaints.

(b) On or before December 31, 1987, the State Bar shall reduce by 80 percent the complaints within its inventory as of March 31, 1985, which have been received but have not resulted in dismissal, admonishment of the attorney involved, or filing of formal charges by State Bar Office of Trial Counsel. This reduction shall be accomplished by dismissal, admonishment of the attorney involved, or recommendation by the State Bar for disposition by the Supreme Court.

(c) The State Bar shall set as a goal by December 31, 1987, the improvement of its disciplinary system so that no more than six months will elapse from the receipt of complaints to the time of dismissal, admonishment of the attorney involved, or the filing of formal charges by the State Bar Office of Trial Counsel.

**§ 6140.3. Increases in membership fees; use of funds; submission of facility construction plan and cost estimate**

(a) The board may increase the annual membership fee fixed by subdivision (a) of Section 6140 and the annual membership fee specified in Section 6141 by an additional amount not exceeding ten dollars (\$10). This additional amount may be used only for (1) the costs of financing and constructing a facility in Los Angeles to house State Bar staff and (2) any major capital improvement projects related to facilities owned by the bar.

(b) At least 30 days prior to entering into any agreement for the construction of a facility in Los Angeles, the State Bar shall submit its preliminary plan and cost estimate for the facility to the Judiciary Committees of the Legislature for review. The documents submitted shall include an analysis demonstrating that the total costs of financing and constructing the facility can be supported by the revenues authorized by this section.

**§ 6140.35. Progress reports; duration of section**

(a) The board shall annually present written and oral progress reports on all State Bar programs to the Judiciary Committees of the Senate and Assembly, as directed by those committees.

(b) This section shall remain in effect until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1992, deletes or extends that date.

**§ 6140.4. Discipline augmentation; increase in membership fee; duration of section**

(a) The board may increase the annual membership fee fixed by it pursuant to Section 6140 by an additional fee for discipline augmentation of not more than one hundred ten dollars (\$110) for 1989, 1990, and 1991, respectively, for all active members.

(b) This augmentation shall be in addition to existing levels of expenditure for discipline as established during 1987 for 1988.

(c) The board may apply up to one hundred ten dollars (\$110) of the discipline enhancement fees during 1989, 1990, or 1991 to pay disciplinary expenses beyond fee receipts for 1988 and 1989.

(d) This section shall remain in effect until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1992, deletes or extends that date.

**§ 6140.5. Client security fund; subrogation to applicant's rights; reimbursement by attorneys**

(a) The board shall establish and administer a Client Security Fund to relieve or mitigate pecuniary losses caused by the dishonest conduct of the active members of the State Bar arising from or connected with the practice of law. Any payments from the fund shall be discretionary and shall be subject to such regulation and conditions as the board shall prescribe. The board may delegate the administration of the fund to the State Bar Court, or to any board or committee created by the board of governors.

(b) Upon making a payment to a person who has applied to the fund for payment to relieve or mitigate pecuniary losses caused by the dishonest conduct of an active member of the State Bar, the State Bar is subrogated, to the extent of that payment, to the rights of the applicant against any person or persons who, or entity that, caused the pecuniary loss. The State Bar may bring an action to enforce those rights within three years from the date of payment to the applicant.

(c) Any attorney whose actions have caused the payment of funds to a claimant from the client security fund shall reimburse the fund for all moneys paid out as a result of his or her conduct with interest, in addition to payment of the assessment for the procedural costs of processing the claim, as a condition of continued practice. The reimbursed amount, plus applicable interest and costs, shall be added to and become a part of the membership fee of a publicly reprovved or suspended member for the next calendar year. For a member who resigns with disciplinary charges pending or a member who is suspended or disbarred, the reimbursed amount, plus applicable interest and costs, shall be paid as a condition of reinstatement of membership.

**§ 6140.55. Client security fund; costs of administration; increase in membership fee**

The board may increase the annual membership fees fixed by it pursuant to Section 6140 by an additional amount per active member not to exceed twenty-five dollars (\$25) in any year, the additional amount to be applied only for the purposes of the Client Security Fund and the costs of its administration, including, but not

limited to, the costs of processing, determining, defending, or insuring claims against the fund.

**§ 6140.6 Increase in membership fee; application to costs of disciplinary system**

The board may increase the annual membership fee fixed by subdivision (a) of Section 6140 by an additional amount not to exceed twenty-five dollars (\$25) to be applied to the costs of the disciplinary system.

**§ 6140.7. Costs assessed publicly reprovved or suspended member; addition to membership fee; payment of costs conditional to reinstatement of membership after resignation with disciplinary charges pending**

Costs assessed against a publicly reprovved or suspended member shall be added to and become a part of the membership fee of the member, for the next calendar year. Costs unpaid by a member who resigns with disciplinary charges pending or by a member who is suspended or disbarred shall be paid as a condition of reinstatement of membership.

**§ 6140.8. State bar discipline monitor; termination date; final report and recommendations**

The term of the State Bar Discipline Monitor shall terminate on January 1, 1992. On September 20, 1991, the monitor shall issue a final report to the Legislature on the implementation of reforms and the performance of the State Bar thereunder, with final recommendations for legislative and budgetary changes in the discipline-competence assurance process of the State Bar.

**§ 6141. Inactive members; fee; age exception**

(a) The board shall fix the annual membership fee for inactive members at a sum not exceeding forty dollars (\$40). The annual membership fee for inactive members is payable on or before the first day of February of each year.

(b) An inactive member shall not be required to pay the annual membership fee for inactive members for any calendar year following the calendar year in which the member attains the age of 70 years.

**§ 6141.1. Waiver of membership fee or penalty; proof of financial hardship**

The payment by any member of the annual membership fee, any portion thereof, or any penalty thereon, may be waived by the board as it may provide by rule. The board may require submission of recent federal and state income tax returns and other proof of financial condition as to those members seeking waiver of all or a portion of their fee or penalties on the ground of financial hardship.

**§ 6142. Certificate of payment**

Upon the payment of the annual membership fees, including any costs imposed pursuant to Section 6140.7, and penalties imposed pursuant to Section 6143, each member shall receive a certificate issued under the direction of the board evidencing the payment.

**§ 6143. Suspension for nonpayment and reinstatement; penalties**

Any member, active or inactive, failing to pay any fees, penalties, or costs after they become due, and after two months written notice of his or her delinquency, shall be suspended from membership in the State Bar.

The member may be reinstated upon the payment of accrued fees or costs and such penalties as may be imposed by the board, not exceeding double the amount of delinquent dues, penalties, or costs.

**§ 6144. Disposition of fees**

All fees shall be paid into the treasury of the State Bar, and, when so paid, shall become part of its funds.

**§ 6145. Annual statement**

The board annually shall prepare a statement showing the total amount of receipts and expenditures of the State Bar for the twelve months preceding. The statement shall be promptly certified under oath by the president and treasurer to the Chief Justice of the Supreme Court.

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